

## DEFINITION OF GOOD FAITH EFFORTS

### 5 NYCRR §142.8 - Contractor's good faith efforts

- (a) The contractor must document its good faith efforts toward meeting certified minority- and women-owned business enterprise utilization plans by providing, at a minimum:
- (1) Copies of any solicitations of certified minority- and/or women-owned business enterprises listed in the New York State Directory of certified businesses, and any responses thereto;
  - (2) If responses to the contractor's solicitations were received, but a certified minority- or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
  - (3) Copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
  - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority- and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
  - (5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority- and women-owned business enterprises.
- (b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
- (1) whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;
  - (2) the number of certified minority- and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
  - (3) The actions taken by the contractor to contact and assess the ability of certified minority- and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
  - (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified minority- and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
  - (5) the terms and conditions of any subcontract or provision of suppliers offered to certified minority- or women-owned business enterprises and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
  - (6) whether the contractor offered to make up any inability to comply with the certified minority- and women-owned business enterprises goals in the subject State contract in other State contracts being performed or awarded to the contractor;
  - (7) the extent to which the contractor's own actions, including but not limited to, any failure by contractor to discharge contractor's duties pursuant to this Part or article 15-A of the Executive Law, contributed to contractor's inability to meet the maximum feasible portion of the contract goals;

- (8) whether the contractor knowingly utilized one or more certified minority- and/or women-owned business enterprises, in the performance of the subject State contract, the contractor knew or reasonably should have known could not perform a commercially useful function;
- (9) whether the contractor submitted compliance reports pursuant to section 142.11 of this Part, which identified certified minority- and/or women-owned business enterprises that contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned pursuant to section 142.2 of this Part; and
- (10) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.